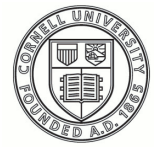

10-10-1975

State of New York Public Employment Relations Board Decisions from October 10, 1975

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from October 10, 1975

Keywords

NY, NYS, New York State, PERB, Public Employee Relations Board, board decisions, labor disputes, labor relations

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-10/10/75

In the Matter of

CITY OF ALBANY,

Respondent,

BOARD DECISION AND ORDER

- and -

CONSTRUCTION AND GENERAL LABORERS UNION, LOCAL 190,

Charging Party,

CASE NO. U-1419

- and -

NEW YORK COUNCIL 66, AFSCME, AFL-CIO,

Intervenor.

On January 3, 1975 the Construction and General Laborers Union, Local 190 (Laborers) filed an improper practice charge against the City of Albany (City) alleging that it violated CSL §§209-a.1(a), (b), (c) and (d). The alleged circumstances constituting the charged violation were that on October 29, 1974 the City had recognized the Laborers as the representative of certain employees at its land-fill operation, but subsequently entered into a consent agreement with another union for a representation election covering such employees, among others. The other union is New York Council 66, AFSCME, AFL-CIO (AFSCME). It sought to intervene in this case and the hearing officer permitted it to do so.

The hearing officer found that the City entered into a consent agreement with AFSCME pursuant to which land-fill employees were included with all other blue-collar employees in the City in a negotiating unit sought to be represented by AFSCME. Thereafter, a secret ballot election was held, following which AFSCME was certified by us as a negotiating agent for the blue-collar unit.

However, the hearing officer also found that the events that had transpired on October 29, 1974 had not constituted a recognition of the Laborers by the City. On that day, the City took over the operation of the land-fill site from a private sector employer. The hearing officer found that the City promised the Laborers that the land-fill employees would not be hurt by the transfer of the operations to the City, and that it would continue to furnish most of the benefits to them that they had received from their private sector employer. According to the hearing officer, this dialogue with the Laborers was not intended to and, in fact, did not, bestow any Taylor Law rights upon the Laborers. The Laborers have filed exceptions to this decision of the hearing officer.

Having reviewed the record and considered the arguments of the parties, we reject some of the hearing officer's conclusions. Those conclusions are based in large measure on his interpretation of circumstances that are only tangently related to this case. The hearing officer notes that, in cases other than the instant one, it is a matter of administrative record that the City never voluntarily recognized any employee organization that sought to represent City employees, but required it to prove its majority status in an election. The City has emphasized that:

> "[A]n election is a democratic way of handling this matter and accordingly, the steps outlined in the Taylor Law should be taken...."

As against this, there is the uncontradicted testimony of the City's Mayor that he intended to recognize the Laborers. It is clear that the agreement reached in the dialogue between the City and the Laborers was not treated in the same manner as agreements reached in Taylor Law negotiations. Typically, Taylor Law agreements have been approved by the City's Common Council. Indeed, such approval is required by CSL §§201.12 and 204-a. Nevertheless, we can not ignore the fact that, de facto, this dialogue constituted a negotiation of

terms and conditions of employment. The City agreed to employ those persons who had previously worked for the land-fill contractor. It agreed that, in lieu of welfare and pension contributions that had been previously paid to certain trusts on their behalf, an equivalent sum of money would be paid directly to the employees until it could be ascertained whether the City was authorized to make such payments to the trusts. For its part, the Laborers agreed to accept a reduction in wages. Beyond that, the parties agreed to abide by the prior contract between the Laborers and the land-fill contractor. That contract was invalid under the Taylor Law in that it lacked the clause required by CSL §204-a, contained an invalid union security provision, and illegally authorized a right to strike.[1]

These circumstances persuade us that the hearing officer erred in concluding that the City never intended to, and indeed did not, bestow any Taylor Law rights upon the Laborers. Being so persuaded, we now find that this case is further complicated by the certification of AFSCME. The conduct of the City and the Laborers did not satisfy the requirements of the Taylor Law and our Rules of Procedure (§201.6) so as to constitute a bar to a representation proceeding. AFSCME instituted such a proceeding. That proceeding, which was reported in the local press, was regularly processed. The Laborers knew of this proceeding, but they did not seek to intervene upon the assurance of the City's Mayor that the land-fill workers were not involved. It appears that the Mayor of the City had not intended to agree to a blue-collar unit that included the land-fill workers and that the City did so because of some oversight or breakdown in its internal communications. Only after newspaper reports and conversations with the City officials that followed the unit agreement had aroused their concern did the Laborers seek official information from this Board

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1 The Mayor testified without contradiction that he advised the Laborers that they would no longer be allowed to strike, but the language of the agreement was not changed.

about the make-up of the blue-collar unit. Ascertaining that the land-fill workers were covered by the consent agreement, they informed the trial examiner of their claim upon the land-fill workers. The trial examiner responded that the Laborers' only avenue of redress, given the execution of the consent agreement, was to seek to intervene and to represent the entire unit. Having neither a desire to represent that unit nor a showing of interest in it, the Laborers then tried, without success, to get the parties to modify the agreement. At this point, counsel for the Laborers advised them to initiate the improper practice charge. It was done. One day later, the election was held and AFSCME was certified as representative of all blue-collar workers, including the land-fill workers.

We conclude that the Laborers did not seek to participate in the representation proceeding before the consent agreement was reached because of assurances from the City that it had no interests that might be compromised in that proceeding. We further conclude that the City, albeit through inadvertence, misled the Laborers in giving that assurance. By entering into a consent agreement with AFSCME that covered land-fill workers in the blue-collar unit, it violated CSL §209-a.1(a) and (d).

We cannot fashion a remedy for this violation that does not compromise the rights of one of two innocent parties -- the Laborers and AFSCME, but we can minimize the injury. According to the record in this case, the City had intended to consent to a unit consisting of all blue-collar employees other than the land-fill workers. The Laborers had, and have, no interest in blue-collar workers other than the land-fill workers. AFSCME sought a unit of all blue-collar employees, including the land-fill workers, and, by reason of the City's violation, had obtained a consent agreement for such a unit. Neverthe-

less, it is better served, at least temporarily, with a unit of all blue-collar employees other than land-fill workers, in which it is certified, rather than by no unit at all.[2] This way, the other blue-collar employees may continue to be represented in negotiations while the status of the land-fill workers is resolved in a representation proceeding.

NOW, THEREFORE, WE ORDER the reopening of the representation case in the Matter of City of Albany (Case No. C-1148) to ascertain whether land-fill workers should have a separate unit or whether they should be included in the blue-collar unit. Meanwhile, the City shall continue to negotiate with AFSCME in the balance of the blue-collar unit that was certified on January 9, 1975.

Dated: Albany, New York
October 10, 1975

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

2 In the election, 171 votes were cast for AFSCME and 88 against, with 39 ballots challenged. Thus, the outcome of the election could not be affected by the elimination of the approximately half-dozen persons who work at the land-fill site.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-10/10/75

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Respondent,

-and-

DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

Charging Party.

BOARD DECISION AND ORDER

CASE No. U-1493

District Council 37, AFSCME, AFL-CIO (AFSCME) filed a charge on February 3, 1975 alleging that the Board of Education of the City School District of the City of New York (employer) committed an improper practice in violation of CSL §209-a.1(d) in that it unilaterally withdrew a benefit that it had previously provided, to wit, the granting of time-off with pay one-half day during the month of December for the purpose of Christmas shopping. The hearing officer dismissed the charge and AFSCME filed exceptions to the hearing officer's decision.

Facts

Since at least 1963, some categories of non-pedagogical employees have been granted one-half day off with pay during the month of December for the purpose of Christmas shopping. This practice has not been reflected in the negotiated agreements between AFSCME and the employer that covered them since January 1, 1968. On December 3, 1974 the employer issued a memorandum stating that there would be no further time allowance for Christmas shopping. The following day, AFSCME objected that the employer could not repeal this practice without first negotiating about it and it demanded the immediate restoration

of the one-half day time off for Christmas shopping. On December 10, the employer responded that it was under no legal obligation to maintain the practice of giving time off with pay for Christmas shopping. Its position was that the granting of the time off was originally a unilateral act of the employer's Chancellor and that each year thereafter the decision whether or not he would continue the practice constituted a discretionary act.

There was testimony on the question of whether the matter of time off with pay for Christmas shopping had come up during negotiations and the hearing officer credited the testimony of Frederic Fisher, an assistant director of the employer's office of labor relations and collective bargaining, that it was mentioned twice. Both times the employer advised AFSCME that it deemed the granting of time off with pay for shopping to fall within the discretion of the Chancellor and that it did not contemplate permitting such time off in the future without charge to annual leave. On one of these occasions, Mr. Victor Gotbaum responded on behalf of AFSCME that, "The one-half day for Christmas shopping was not to be included in the contract, but we are not putting an agreement on it...."

Hearing Officer's Decision

The hearing officer determined that the subject of time off for Christmas shopping with pay was a mandatory subject of negotiations. He also determined that the employer had not communicated to AFSCME before 1972 its position that the granting of such time off with pay was a separate act of discretion each year. Emphasizing that the practice of granting one-half day off with pay for Christmas shopping had been continued without any significant change for over ten years, the hearing officer concluded that it was a term and condition of employment that could not be withdrawn unilaterally. The hearing officer's final conclusion was that AFSCME had waived its right to

negotiate over the matter by agreeing that it "was not to be included in the contract...."

Discussion

Having reviewed the record and the parties' briefs, we confirm the hearing officer's findings of fact. We also confirm his conclusion that as a long-standing past practice, time off with pay for Christmas shopping could not be withdrawn by the employer unilaterally unless AFSCME had waived its right to negotiate over the matter. However, we reject his conclusion that AFSCME waived this right. We believe that the hearing officer has misconstrued Mr. Gotbaum's response to the employer when the subject was raised during negotiations. We understand Mr. Gotbaum's words, as testified to by the assistant director in the employer's office of labor relations and collective bargaining,[1] as being a refusal to waive its rights. That is the only rational interpretation of the words, "We are not putting an agreement on it". Moreover, this conclusion is consistent with Mr. Gotbaum's statement that the employer's position would not be included in the contract. Absent an agreement to eliminate the past practice, AFSCME considered itself entitled to the continuation of that practice.

Finding that AFSCME did not waive its right to negotiate over a change in the employer's practice of providing time off with pay for Christmas shopping, we reject the decision of the hearing officer and we determine that the employer violated CSL §201-a.1(d).

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[1] The witness was emphatic that he remembered the phrase used by Mr. Gotbaum.

NOW, THEREFORE, in view of the above findings of fact and conclusions of law, and in view of the specific violation of the Act that we have found to have occurred,

WE ORDER the Board of Education of the City School District of the City of New York to negotiate in good faith with District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO.

Dated: Albany, New York
October 10, 1975

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, Respondent, -and- COUNCIL OF SUPERVISORS AND ADMINISTRATORS OF THE CITY OF NEW YORK, LOCAL 1, SASOC, AFL-CIO, Charging Party.	#2C-10/10/75 BOARD DECISION ON MOTION TO DISMISS CASE NO. U-1685

On August 28, 1975 the hearing officer issued a decision finding that the Board of Education of the City School District of the City of New York (employer) had committed an improper practice in violation of CSL §201-a.1(d) in that it had improperly refused to agree to a date for the commencement of negotiations with the Council of Supervisors and Administrators of the City of New York, Local 1, SASOC, AFL-CIO (charging party) until after it had resolved its budgetary matters. The hearing officer's decision and recommended order was mailed to the parties and was received by both of them on September 2, 1975. Transmitted with the decision was a letter stating, inter alia:

> "Any party to the proceeding may file with the Board an original and four copies of exceptions to the Decision and Recommended Order within 15 working days after receipt of same. A party filing exceptions must simultaneously file an original and four copies of a brief in support of exceptions, together with proof of service of copies of both documents upon all other parties. These exceptions must comply with the requirements set forth in Section 204.10(b) of the Board's Rules of Procedure, as amended."

On September 24 the employer hand delivered to us exceptions to the hearing officer's decision and recommended order. They were hand delivered to the charging party on the same day. On September 26, 1975 we received a letter from the charging party which constitutes a motion to dismiss the exceptions on the ground that they are not timely. A copy of that letter was sent to the

employer. The relevant provisions of our Rules are:

1. 4 NYCRR 204.10 "Exceptions to Hearing Officer's Decision and Recommended Order. (a) Within fifteen working days after receipt of the decision and recommended order, a party may file with the Board...exceptions thereto.... such exceptions and briefs shall be served upon all other parties...."

2. 4 NYCRR 200.9 "Working Days. The term 'working days', as used herein, shall not include a Saturday, Sunday or legal holiday."

3. 4 NYCRR 200.10 "Filing; Service. (a) The term "filing', as used herein, shall mean personal serv ice upon the Board or an agent thereof, or the act of mailing to the Board not less than two days before the due date of any filing.

   (b) The term "service', as used herein, shall mean personal service or the act of mailing not less than two days before the due date."

4. 4 NYCRR 204.12 "Request for Extension of Time. A request for extension of time within which to file exceptions and briefs shall be in writing, and filed with the Board at least three working days before the expiration of the required time for filing,...."

5. 4 NYCRR 204.14 "Board Action....
   (c) Unless a party files exceptions to the decision and recommended order of the hearing officer within fifteen working days after receipt thereof, the decision and recommended order, or any part thereof which concludes that a charge has merit and that remedial action should be required, will be final except that the Board may, on its own motion, decide to review the remedial action recommended within twenty working days after receipt by the parties of the decision and recommended order."

September 23 was fifteen working days after receipt by the employer of the hearing officer's decision and recommended order. Accordingly, it was obligated to have completed by the end of that day actual delivery of its exceptions and brief to the Board and to the charging party, or to have mailed its exceptions and brief to the Board and the charging party by September 22 (Sept. 21 was a Sunday. See General Construction Law Section 25-a.) The employer had not sought an extension of time during which to file exceptions. Thus, on the

facts before us and the terms of our Rules of Procedure, we determine that the exceptions were not timely and we grant the charging party's motion to reject them.

NOW, THEREFORE, WE ORDER that the motion of the charging party to reject the employer's exceptions on the ground that they are untimely be, and it hereby is, granted.

Dated: Albany, New York
October 10, 1975

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, Respondent, -and- LOCAL 372, DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO, Charging Party.	#2D-10/10/75 BOARD DECISION AND ORDER CASE NO. U-1477

Local 372, District Council 37, American Federation of State, County, and Municipal Employees, AFL-CIO (Local 372) filed with the New York State Public Employment Relations Board (PERB), an improper practice charge alleging that the Board of Education of the City School District of the City of New York (employer) violated §§209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act)[1] by unilaterally implementing a policy requiring mandatory termination of employment at age 70 of certain employees represented by Local 372 and by refusing to negotiate with the Local concerning that policy.

The hearing officer concluded that the employer, by refusing to negotiate the subject of a mandatory termination age, violated §209-a.1(d) of the Act; the employer filed exceptions to this conclusion. The substance of these exceptions is the contention of the employer that the Local had waived its right to negotiate on the issue of a mandatory termination policy and there was, therefore, no obligation on the part of the employer to negotiate.

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1 These sections of the Act make it an improper employer practice "...(a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; ...(c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees."

The hearing officer found that the employer had an established policy (dating back to 1967) requiring mandatory termination of administrative employees at age 70.[2] Accordingly, he rejected so much of the charge as alleges that the employer unilaterally implemented a mandatory termination age or otherwise changed an existing term and condition of employment.[3] However, the hearing officer found that the Local was unaware of this mandatory termination policy until October 1974 and that the subject of a mandatory termination age was neither embodied in the contract nor was it discussed previously by the parties in their prior negotiations. Based on this finding, he concluded that since this was a mandatory subject of negotiations[4] and, further, since it was neither included in the negotiated agreements nor considered during negotiations, there was a duty on the part of the employer to negotiate this subject with the Local absent a waiver by the Local.

Inherent in this result is the conclusion that an existing negotiated agreement does not relieve an employer of the duty to negotiate. In reaching this conclusion, the hearing officer cited private sector precedent[5] and obiter dictum of this Board.[6] However, we do not reach this question herein because we find that the record supports a conclusion that the Local waived its right to negotiate on the issue of mandatory termination age.[7]

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2 The term "administrative employee" includes the job titles of "School Aides" and "Hourly School Lunch Employees" represented by the Local herein.

3 This conclusion of the hearing officer required a dismissal of the charges alleging a violation of Section 209-a.1(a) and (c) of the Act.

4 The parties stipulated that the issue of a mandatory termination age is a mandatory subject of negotiations.

5 NLRB v. Jacobs, 191 F. 2d 680

6 In the Matter of North Babylon, 7 PERB 3040, 3042

7 The hearing officer found that there had been no waiver and endeavored to base such finding on a resolution of credibility of witnesses. We base our conclusion of waiver on an analysis of the record and exhibits and not on credibility of witnesses.

Discussion

The parties negotiated a contract for the School Lunch Employees and a contract for the School Aides covering the term July 1, 1971 to June 30, 1974.

As to the School Lunch Employees Article IX of such contract provides

"Article IX

Termination Pay Allowance

> Effective May 1, 1972, employees, after reaching ten years of service, who resign or are terminated shall be paid for accumulated sick leave on the basis of one hour for every two hours of accumulated sick leave.
>
> The maximum termination pay allowance shall not exceed 400 hours.
>
> This Article is to be applicable to employees who were terminated on or after September 1971 because of attainment of age 70."[8]

Hughes, an officer of the Local appeared as a witness. When asked if October 1974 was the first time he was aware of the policy of "forced retirement" at age seventy, he responded that "we discussed age seventy" referring to the language of the contracts quoted supra. Hughes testified that the provisions set forth in Article IX and Article XXII re termination pay of the 1971-74 contracts[9] were new provisions and that the thrust of the Union's position was to provide termination pay for employees who had over ten years service. Hughes was asked to explain the reasons for the inclusion of the last paragraph of Article IX (also Article XXII) relating to the termination of employees "because of attainment of age 70". This question was not given a direct response. The essense of Hughes's response was that the conclusion of the negotiations of the 1971-74 contract was not reached until the Spring of 1972 and this in turn gave rise to issues of retroactivity. The union sought retroactivity for all employees as to termination pay. This was rejected by the employer. The union then proposed a special exception so as to provide retroactivity of benefits to those terminated because of attainment of age 70.

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8 Article XXII of the School Aides contract is in haec verba.

9 Set forth supra.

The hearing officer asked three times the basis for the inclusion of a special provision for age seventy terminations and when so pressed Hughes responded "I have no answer for that."

There can be no doubt that in seeking the inclusion of the provisions of the third paragraph of Article IX (also Article XXII) that the Local was seeking an exception for employees who were being terminated because of attaining the age of seventy so that the benefits would be applicable to those who had retired prior to the reaching of an agreement. It seems clear that the Local was aware in 1972 that employees were being terminated at age seventy. The Local did negotiate as to terminated benefits for such employees and did not seek to negotiate on the criterion of age.[10] Thus we find that the Local, though aware of the age seventy criterion, sought only to negotiate on the impact of the implementation of such criterion. Therefore, we conclude that the Local waived its right to negotiate on the age criterion for the term of the extant agreement.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed in its entirety.

Dated: October 10, 1975
Albany, New York

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

3997

10 Similarly in the successor contract termination benefits were negotiated.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-10/10/75

In the Matter of :

Case No. I-0027

NASSAU COUNTY CORRECTION OFFICERS BENEVOLENT ASSOCIATION, INC. :

to review the Implementation of the Provisions and Procedures enacted by the County of Nassau pursuant to Section 212 of the Civil Service Law. :

BOARD DECISION & ORDER

On May 19, 1975, the Nassau County Correction Officers Benevolent Association, Inc. (COBA) filed a petition with this Board to review the implementation of the provisions and procedures of the Nassau County Public Employment Relations Board (local board) pursuant to section 203.8 of this Board's Rules of Procedure. The petition, as supplemented by letter dated June 16, 1975, alleged that the local board has denied petitioner rights granted to it under Article 14 of the Civil Service Law by its decision in a representation proceeding, in which COBA sought to represent a unit of correction officers employed by the Nassau County Sheriff's Department. Petitioner also contends that the local board "has failed to give these employees the substantially equivalent rights to which they would be entitled if their petition had been filed with the State Board."

The petitioner's claim is based on a decision of the local board dated April 16, 1975, affirming a hearing officer's Report and Recommendations dated December 27, 1974, which denied COBA's petition for certification and decertification. Hearings were held before the local board's Hearing Officer, John F. Coffey, Esq., on September 23, 1974, October 8 and 11, 1974, and before the full board on March 25, 1975. This Board has been furnished a copy of the transcript for each date of hearing and with copies of both the hearing officer's Report and Recommendations, and a copy of the local board's Decision and Order.

On June 30, 1975, the local board submitted a response to the petitioner which questions the jurisdiction of PERB under section 212 of the Civil Service Law to sit "as an Appellate Court reviewing a substantive unit determination made by the local board." As we have stated in an earlier opinion of this Board, Local 237, International Brotherhood of Teamsters, 2 PERB 3263:

> "Civil Service Law §212 requires this Board to review the implementation of the provisions and procedures of a local board. Such review can, in the nature of things, only take place when the local board has taken specific action and that action has been challenged by the filing of a petition pursuant to §203.8 of the Rules of Procedure of the State Board. Such a petition having been filed in this instance, the New York State PERB is obliged to review the implementation of the local government provisions and procedures. This is not an instance of the New York State PERB substituting its judgment for that of the local board."

Since the instant petition filed pursuant to section 203.8 alleges that the local board's procedures have resulted in a denial of Taylor Law rights, this Board is obligated to review the implementation of such local government procedures.

The contentions of the petitioner do not relate to any procedural matter but rather to the merits of the unit determination. It is urged that the special working conditions of these employees together with the history of representation of these employees by the presently certified organization require the establishment of a separate negotiating unit. The gravamen of the petition is that if COBA's petition for certification and decertification had been considered by this Board instead of the local board, such petition would have been granted and fragmentation of the existing overall unit would have been ordered. Based upon the many decisions of this Board involving similar factors, it is our opinion that such a contention is, at best, optimistic. But even if true, we stated several years ago the standard we would follow in reviewing contentions relating to the merits of a unit determination:

> "The decisions made by the local board on September 4, 1968 reflect careful consideration of the issues and may be deemed to reflect that board's best judgment within the guidelines set forth in the statute. It is not contemplated that this Board's function of reviewing such determination is intended as a method by which this Board might substitute its judgment for that of the local board in such representation proceedings." (New York State Nurses Assn., 2 PERB 3247).

4000

It appears from the hearing officer's report, adopted by the local board, that the local board took into consideration the statutory criteria in arriving at its unit determination. The decision reflects the local board's "best judgment within the guidelines set forth in the statute". The record shows that the hearing was conducted in a fair manner and that the petitioner was afforded ample opportunity to present whatever evidence it desired to offer. Therefore, we cannot find that the provisions and procedures enacted by Nassau County have not been implemented by the Nassau County Public Employment Relations Board in a manner substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law and the Rules of Procedure of this Board.

One further matter must be noted. On September 23, 1975, petitioner submitted, in support of its petition, evidence of an incident alleged to have occurred at a meeting of the presently certified employee organization held on September 11, 1975. It is clear that we cannot take into consideration in this proceeding evidence of incidents occurring after the determination of the local board which is the subject of this review.

In view of the foregoing, it is

ORDERED that the petition of the Nassau County Correction

Officers Benevolent Association be and the same hereby is dismissed.

Dated, Albany, New York
October 10, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2F-10/10/75
BROOKHAVEN-COMSEWOGUE UNION FREE SCHOOL DISTRICT, Employer,	
-and-	CASE NO. C-1208
PORT JEFFERSON STATION TEACHER MONITORS ASSOCIATION, Petitioner.	

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Port Jefferson Station Teacher Monitors Association

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

Included: All school monitors and part-time clericals.

Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Port Jefferson Station Teacher Monitors Association

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 10th day of October, 19 75.

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

4003

PERB 58
(10-75)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF	:	#2G-10/10/75
TOWN OF SHELDON,	:	
Employer,	:	
-and-	:	Case No. C-1259
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 227, AFL-CIO,	:	
Petitioner.	:	
	:	

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Service Employees International Union, Local 227, AFL-CIO

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees of the Highway Department of the Town of Sheldon in the position of Motor Equipment Operator.

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Service Employees International Union, Local 227, AFL-CIO

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 10th day of October, 19 75.

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

PERB 58(2-68)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2H-10/10/75
VILLAGE OF MONTICELLO,	:	
Employer,	:	
-and-	:	Case No. C-1267
LOCAL 750, COUNCIL 66, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,	:	
Petitioner.	:	

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Local 750, Council 66, American Federation of State, County and Municipal Employees, AFL-CIO

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

Included: All employees in the highway, sanitation, parks and grounds, landfill, building and maintenance, and central garage divisions of the public works department, and all sewer department employees.

Excluded: Village manager, village clerk, deputy village clerk, village treasurer, housing and building inspector, superintendent of public works, superintendent of sewer department and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 750, Council 66, American Federation of State, County and Municipal Employees, AFL-CIO

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 10th day of October , 19 75.

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

PERB 58(2-68)

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